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THE PRACTICAL APPLICATION OF THE CUSTOM OF 'ARAFA ON THE BORDERLAND BETWEEN TWO STATES

425 The application of the *'arafa* law becomes somewhat less easy when
648 two tribes which are perhaps hostile to each other, or belong to differ-
619 ent states adjoining one another, are involved, or where strong Governments are functioning, as to-day in the case in Kuwait, Sa'udi Arabia and Iraq, and where border officials are interested in seeing that shaikhs and individual members of tribes in their areas do not raid, steal or take the law into their own hands, especially across the border.

In such cases, while the custom of *'arafa* is quite well understood, it is essential that a controlling authority enforce the rules of the game, otherwise nothing is done. The Shaikh of Kuwait put it in a nutshell, when he told me that the law of *'arafa* was a most excellent law for settling Badawin disputes, and it dated back to very ancient times, but unless Rulers or Governments were strong enough to enforce it within or across their borders it became quite useless, for then as always the strongest won the day. A Badawin, for instance, in the case mentioned below, would never hand over the camel he had purchased unless he was made to do so by his Government acting through its officials on the spot.

425 "A", a subject of some state, finds a camel which has been stolen
[694] from him in the past, grazing in the desert with "B's" camels (a sub-
695 ject of another state). "A's" and "B's" tribes are not on friendly terms.
• 696 "A" does not waste his time in going and demanding it from "B", who quite naturally will refuse to give it up until made to do so. He goes instead to the nearest *Hákim* or Government representative in the particular area "B" is in, armed with a letter from his own frontier officer. (To-day in North-East Arabia it is Hamud al Baga'awi for Sa'udi Arabia, 'Abdullah bin Jabir for Kuwait, and the Iraqi Officer in Charge Southern Desert Police for Iraq), and will say that "B" has in his possession a certain camel which has been stolen from him, "A". The officer in charge of the area in question will send for "B" and in his presence will ask "A" to prove his claim. Here is where the Shari'a law comes in as practised in the desert. "A" can

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prove his claim in two ways, (*a*) either by producing two witnesses who will corroborate his testimony that the camel was his property, and that he had neither sold nor given it away, or (*b*) "A" can produce one witness who must declare *on oath* that the camel belongs to "A" and that it was neither sold nor given away by him. 425 695 696

"B" can also if he likes insist that "A" states the same thing on oath, but this is not actually necessary, according to the law.

One or other of these courses having been followed, the Government officer in charge of the area in question does not even ask how "B" got the camel, but on the above evidence must order "B" to hand over the animal at once.

If "B" has stolen the camel himself, he will of course gladly hand over and hope "A" will not bring further witness proving that he stole it.

If, however, "B" has innocently bought the camel from say "C", then he can be counted upon to shout this fact from the housetops (this in spite of the fact that a rather dead order exists both in Sa'udi Arabia and Kuwait to-day, which forbids a man buying a camel till the seller can satisfactorily prove that it has not been stolen). The officer dealing with the case will then proceed as follows: He must ask who the seller "C" was and where he can be found. When "B" has told him, "C" will be summoned, and in the presence of "C" "B" will have to produce two witnesses to testify that he bought the camel from "C" (or one witness to take oath). When "B" has done this to the satisfaction of the officer, the latter makes "C" pay the purchase money back to "B". If "C" claims to have bought the camel from "D", the officer will adopt the same procedure, working backwards till the original thief is found, who then is suitably punished.

The above method of settlement becomes somewhat more complicated if individuals concerned are subjects of different states. For instance, should "A" be a Kuwaiti, "B" be an Iraqi and "C" a Najdi, the procedure is the same, only three *Hākims* or frontier officers have to be brought in. For instance, "A" will go to the Shaikh of Kuwait, who will send him armed with a letter (usually also with a letter from the Political Agent) to the Inspecting Officer or Com- 425 648 694 695 641